

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

THEODORE (TED) E. DAUVEN,
BARBARA G. DAUVEN, AND
CHRISTIANA C. DAUVEN,

3:13-CV-00844-AC

ORDER

Plaintiffs,

v.

U.S. BANCORP; U.S. BANK
NATIONAL ASSOCIATION, as
trustee for MASTR ASSET
BACKED SECURITIES TRUST,
2006-WMC2; WELLS FARGO AND
COMPANY; IAN REEKIE; REEKIE
PROPERTIES, LLC; J.R. OLEYAR;
DANIEL STAUFFER; SHAWNA
STAUFFER; RANDALL STAUFFER;
CHRISTINA STAUFFER; ELIZABETH
BALKOVIC ALLAN; TERESA
BALKOVIC; MARY MARGARET
WEIBEL; SAMUEL TAYLOR V; and
ANNIE MECKLEY TENNESON,

Defendants.

BROWN, Judge.

Magistrate Judge John V. Acosta issued Findings and Recommendation (#217) on March 2, 2015, in which he recommends the Court grant in part and deny as moot in part Defendants' Motions to Dismiss (#180, #181, #184, #190, #200, #207, #208, #209) and decline to exercise supplemental jurisdiction over Plaintiffs' state-law claims. Magistrate Judge Acosta also recommends the Court dismiss without prejudice Plaintiffs' Second Amended Complaint (#170) and grant Plaintiffs leave to file a third amended complaint to cure the deficiencies set out in the Findings and Recommendation. Plaintiffs filed timely Objections. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). *See also Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)(*en banc*).

In their Objections Plaintiffs reiterate the arguments contained in their Response to Defendants' Motions. This Court has carefully considered Plaintiffs' Objections and concludes they do not provide a basis to modify the Findings and Recommendation. The Court also has reviewed the pertinent

portions of the record *de novo* and does not find any error in the Findings and Recommendation. The Court, however, modifies the Findings and Recommendation as follows:

As noted, the Magistrate Judge recommends this Court grant Plaintiffs leave to file a third amended complaint to cure the deficiencies set out in the Findings and Recommendation. The Ninth Circuit has made clear that when a plaintiff fails to state a claim, "[l]eave to amend should be granted unless the pleading 'could not possibly be cured by the allegation of other facts,' and should be granted more liberally to *pro se* plaintiffs." *Alcala v. Rios*, 434 F. App'x 668, 670 (9th Cir. 2011)(quoting *Ramirez v. Galaza*, 334 F.3d 850, 861 (9th Cir. 2003)). The Court, however, notes in the two years this matter has been pending Plaintiffs have filed three lengthy Complaints to attempt to cure the deficiencies noted by the Magistrate Judge and this Court. Plaintiffs, however, have still failed to state adequately any claim. Accordingly, the Court grants Defendants' Motions to Dismiss with prejudice as to Plaintiffs' federal claims (Claims 1-3, 7-9). In addition, the Court, in the exercise of its discretion, declines to exercise supplemental jurisdiction over Plaintiffs' state-law claims (Claims 4-6, 10-12) and, therefore, dismisses those claims without prejudice.

CONCLUSION

The Court **ADOPTS as modified** Magistrate Judge Acosta's Findings and Recommendation (#217). Accordingly, the Court **GRANTS** Defendants' Motions to Dismiss (#180, #181, #184, #190, #200, #207, #208, #209); **DISMISSES** Plaintiffs' Claims 1-3 and 7-9 **with prejudice**; **DISMISSES** Plaintiffs' Claims 4-6 and 10-12 **without prejudice**; and **DISMISSES** this matter in its entirety without further leave to amend.

IT IS SO ORDERED.

DATED this 12th day of May, 2015.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge